IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1) S.B.CRIMINAL MISC. PETITION NO. 566/2005
(Daula Ram and Ors. Vs. Smt. Suadevi & Anr.)

(2) S.B.CRIMINAL MISC. PETITION NO. 518/2006
(Jaitaram and Ors. Vs. Smt. Suadevi & Anr.)

Date of Order : 08/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.K.Bishnoi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. L.R.Choudhary for the non-petitioner No.2.

BY THE COURT:-

By criminal misc. petition No. 566/05 under Section 482 Cr.P.C., the petitioners have challenged the order dated 23.3.2004 passed by Sessions Judge Balotra (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dated 12.06.2001 passed by Additional Chief Judicial Magistrate, Balotra (for short 'the trial court' hereinafter) taking cognizance of the offence under Section 379 IPC and issuing process against the petitioner, was dismissed. By Criminal Misc. Petition No.518/06, the petitioners have challenged the same order dated 12.6.2001 passed by the

trial court taking cognizance of the offence under Section 379 IPC and issuing process against them. Since both the petitions arise out of common order dated 12.6.2001 taking cognizance, therefore, with the consent of learned counsel for the parties, they are heard together and decided.

I have heard learned counsel for the parties. Carefully gone through the order of the trial court as well as of the revisional court.

It is contended by the learned counsel for the petitioners that on the first information report lodged by the complainant non-petitioner No.1, the police investigated the matter and filed a negative final report on the ground that the matter is of civil nature. However, the trial court did not accept the FR and took cognizance of the offence and issued process against the petitioners by the order impugned.

On careful perusal of the order of the trial court, it appears that a truck was purchased by complainant Smt. Suadevi on monthly installments by paying certain amount in advance. According to the complainant, a total sum of Rs.4,93,750/- has been paid to the vendor, yet the truck in question was taken away by the petitioners forcibly.

The trial court noticing the statements of various witnesses recorded under Section 161 Cr.P.C. by the police, came to the conclusion that prima-facie there is ground to

proceed against the present petitioners.

It is settled law that even if the matter is of civil consequence, then also, criminal proceeding is not barred in view of decisions of Hon'ble Supreme Court in Lalmuni Devi (Smt.) Vs. State of Bihar & ors., (2001) 2 SCC 17, Alpic Finance Ltd. Vs. P. Sadasivan & Anr., (2001) 3 SCC 513, M. Krishnan Vs. Vijay Singh & Anr., (2001) 8 SCC 645.

The revisional court, on a revision by the petitioners in Cr. Misc. Petition No.566/05, also came to the conclusion that there is evidence and ground to proceed against the petitioners. Thus, both the courts below concurrently found prima-facie case against the petitioners.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for

conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process, the Magistrate is not required to record reasons.

Keeping in view, the decision of the Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan (supra) as also three decisions of the Hon'ble Supreme Court referred herein above, in my view, the trial court was justified in taking cognizance and issuing process against the petitioners. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of the Court.

Both the petitions have no force and are therefore, dismissed. Stay petitions also stand dismissed.

(H.R.PANWAR),J.

Rp